



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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BETH NAGUSKY
ACTING COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection

FROM: Michael Parker, Bureau of Remediation and Waste Management, Augusta

SUBJECT: Appeal of Department Order #S-020700-WU-AJ-N, issued to State of Maine,
Acting through the State Planning Office

DATE: December 2, 2010

Statutory and Regulatory References:

- *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§ 1301 to 1319-Y, establishes statutory authority and licensing criteria for disposal of special waste and disposal of wastes at a State-owned disposal facility.
- *Solid Waste Management Rules: General Provisions*, 06-096 CMR 400 (last amended July 20, 2010), establishes the rules regarding administrative matters and general standards concerning solid waste facilities and solid waste handling under which this license was processed.
- *Solid Waste Management Rules: Landfill Siting, Design and Operation*, 06-096 CMR 401 (last amended July 20, 2010), establishes the requirements of the Department for siting, design, and operation of landfills for the disposal of municipal solid waste, special wastes, construction/demolition debris, land clearing debris, and wood wastes.
- *Solid Waste Management Rules: Water Quality Monitoring, Leachate Monitoring, and Waste Characterization*, 06-096 CMR 405 (last amended June 16, 2006), establishes rules concerning site investigation; ground and surface water quality monitoring; leachate, leak detection, and leachate residue monitoring; and waste characterization programs for solid wastes.
- *Solid Waste Management Rules: Processing Facilities*, 06-096 CMR 409 (last amended July 20, 2010), establishes the rules of the Department for the siting, design, operation and closure of solid waste processing facilities.

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- *Biomedical Waste Management Rules*, 06-096 CMR 900 (last amended August 4, 2008), identifies biomedical waste subject to regulation; requires the registration of biomedical waste generators; and establishes packaging, labeling, handling, storage, transportation and treatment requirements. The rule does not establish disposal standards for biomedical waste because this rule defines treated biomedical waste as a special waste.
- *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended April 1, 2003), governing various administrative activities of the Department of Environmental Protection. Included within these rules are sections that apply to advisory opinions, license application requirements, application fees, public notice, public access to information, processing times, license transfers, and appeals to the Board of Environmental Protection.

Location: Juniper Ridge Landfill, located off the Bennoch Road in Old Town, Maine.

Description: On June 30, 2010, the Department issued Order #S-020700-WU-AJ-N which approved, with conditions, the request by the State Planning Office to dispose of up to 5,000 tons per year of treated biomedical waste at the Juniper Ridge Landfill. The treated biomedical waste is generated by the Associated Health Resources, Inc. (AHR) facility located in Pittsfield, Maine. AHR treats biomedical waste from hospitals, laboratories, medical practices, dentists and veterinary practices located both in-state and out-of-state. In the course of reviewing the application, the Department took into consideration the volume of waste proposed for disposal, the process by which the waste is generated, proper waste handling procedures and whether this waste is "waste generated within the State" as defined in 38 MRSA §1310-N(11). The Department received comments from interested persons on these same issues, copies attached with this memorandum. These comments were addressed by Department staff within the Order.

On July 28, 2010, Mary Dolan, Edward Spencer and Charles Leithiser submitted an appeal of the Commissioner's license approval. The appeal included three exhibits that were not part of the Department's file when the Department issued its decision on the application on June 30, 2010. By letter dated September 16, 2010, the applicant and its agent responded as to the admissibility of the three documents. By letter dated September 27, 2010, Board Chair Susan Lessard ruled that the additional documents would not be admitted to the record. The above-listed appellants are appealing the Department's decision, requesting that the Board vacate the Department's approval of the application, or, that the approval reflect the percentage of in-state waste received by the AHR facility, that every load of treated waste be tested and that the disposal location of the treated waste be accurately mapped within the landfill. In requesting these remedies, the appellants believe the Department erred in determining that all the treated waste generated by the AHR facility is "waste generated within the State", the volume of waste proposed for disposal is excessive and bringing biomedical waste to the landfill poses serious health and safety risks not adequately addressed by the Department. By letter dated October 18, 2010, the applicant and its agent responded as to the merits of the appellant's objections.

On July 30, 2010, by letter dated July 6, 2010, the Juniper Ridge Landfill Advisory Committee submitted an appeal of the Commissioner's license approval. No additional exhibits were submitted by the appellant for consideration by the Board. The appellants are appealing the Department's decision, requesting that the Board amend the approval to limit the amount accepted to disposal to 3,000 tons per year. In requesting this remedy, the appellant believes the Department erred in determining that all the treated waste generated by the AHR facility is "waste generated within the State" and that the volume of waste proposed for disposal is excessive. By letter dated August 30, 2010, the applicant and its agent responded as to the merits of the appellant's objections.

By letter dated August 4, 2010, Chief Kirk Francis of the Penobscot Indian Nation expressed the Nation's support of the appeal submitted by Mary Dolan, Ed Spencer and Charles Leithiser, but did not formally appeal the Department's decision.

By letter dated September 27, 2010, Board Chair Susan Lessard consolidated the appeals of Mary Dolan, Ed Spencer, Chuck Leithiser and the Juniper Ridge Landfill Advisory Committee.

Environmental Issues: Proper collection, treatment and disposal of biomedical waste are critical in preventing the exposure to and the transmission of human pathogens to health care workers, lab technicians and the general public. The Biomedical Waste Management Rules (06-096 CMR 900) contain specific provisions for the collection, treatment and disposal of these wastes. Included in the Rules are standards for treatment facilities, including non-incineration technologies, such as those used at the AHR facility. The AHR facility uses steam and pressure to achieve the inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites, and mycobacteria at a 99.9999% reduction or greater; and inactivation of *Bacillus stearothermophilus* spores and *Bacillus subtilis* spores at a 99.99% reduction or greater in the treated waste. [See Department Order #O-221-BD-B-M] The resulting treated waste is special waste, as determined by the Board and stated in 06-096-CMR 900.19(E) and may be disposed of at a landfill approved to accept special waste.

Department Order #S-20700-WD-N-A [Section 1C, page 4], the Operating Services Agreement between the State Planning Office [Section 1.17 "Excluded Waste"] and 38 MRSA §1310-N(11) all prohibit the disposal of waste not generated within the State, subject to certain provisions. Specifically, 38 MRSA §1310-N(11) states, "Consistent with the Legislature's findings in section 1302, a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. For purposes of this subsection, "waste generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility. " [2007, c. 414, §3 (NEW) .]

The appellants assert that the Department has erred in approving the disposal of excessive amounts of treated biomedical waste, that waste handling procedures necessary to prevent exposure to the treated waste have not been properly addressed and that the Department has erred approving the disposal of out-of-state waste at the Juniper Ridge Landfill.

Department Recommendation: Dismiss the appeal, and affirm Department Order #S-20700-WU-AJ-N.

Contact and/or presenter: Michael Parker, Bureau of Remediation and Waste Management

Estimated Time of Presentation: 2 hours.

Appeal Packet Table of Contents:

Attachment 1	Copy of 38 MRSA §2101
Attachment 2	Copy of 38 MRSA §1310-N(11)
Attachment 3	Draft Board Order/Staff Recommendation
Attachment 4	Order Under Appeal
Attachment 5	Letters of Appeal
Attachment 6	Letter of Support from Penobscot Indian Nation
Attachment 7	Applicant's Response to Dolan, Spencer and Leithiser Appeal
Attachment 8	Applicant's Response to Landfill Advisory Committee Appeal
Attachment 9	Copy of Department Order #O-221-BD-M
Attachment 10	Excerpt From Department Order #S-20700-WD-N-A
Attachment 11	Excerpt From Operating Services Agreement

COPY OF 38 MRSA §2101 SOLID WASTE MANAGEMENT HIERARCHY

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STATUTE SEARCH

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TITLE 38 CONTENTS

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AND NAVIGATION

Chapter 24: SOLID WASTE MANAGEMENT AND RECYCLING HEADING: PL 1995, C. 465, PT. A, §26 (RPR)

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1995, C. 465, PT. A, §27 (RPR)

§2101. Solid waste management hierarchy

1. Priorities. It is the policy of the State to plan for and

implement an integrated approach to solid waste management for solid waste generated in this State and solid waste imported into this State, which must be based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste; [1989, c. 585, Pt. A, §7 (NEW) .]
- B. Reuse of waste; [1989, c. 585, Pt. A, §7 (NEW) .]
- C. Recycling of waste; [1989, c. 585, Pt. A, §7 (NEW) .]
- D. Composting of biodegradable waste; [1989, c. 585, Pt. A, §7 (NEW) .]
- E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and [2007, c. 583, §7 (AMD) .]
- F. Land disposal of waste. [1989, c. 585, Pt. A, §7 (NEW) .]

It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.

[2007, c. 583, §7 (AMD) .]

2. Waste reduction and diversion. It is the policy of the State to actively promote and encourage waste reduction measures from all sources and maximize waste diversion efforts by encouraging new and expanded uses of solid waste generated in this State as a resource.

[2007, c. 192, §2 (NEW) .]

SECTION HISTORY

1989, c. 585, §A7 (NEW). 2007, c. 192, §2 (AMD). 2007, c. 583, §7 (AMD).

COPY OF 38 MRSA §1310-N(11)

C. If the analysis indicates possible contamination from the facility, the commissioner shall require the licensee to conduct additional sampling and analysis in conformance with department rules regarding solid waste management to determine more precisely the nature, extent and source of contamination. The commissioner shall, if necessary, require this sampling beyond the boundaries of the property abutting the facility. [1999, c. 691, §1 (NEW).]

D. If a facility adversely affects a public or private water supply by contamination, pollution, degradation, diminution or other means that result in a violation of the state drinking water standards as determined by the commissioner, the licensee shall restore the affected supply at no cost to the consumer or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no cost to the consumer. [1999, c. 691, §1 (NEW).]

E. The licensee shall provide owners of property abutting the facility with written notice of their rights under this subsection on a form prepared by the commissioner as follows:

(1) On or before December 1, 2000, for a commercial solid waste disposal facility that accepts special waste for landfilling licensed under this chapter prior to October 1, 2000; and

(2) At or before the time of license issuance for a commercial solid waste disposal facility that accepts special waste for landfilling licensed under this chapter on or after October 1, 2000.

[1999, c. 691, §1 (NEW).]

This subsection applies to a new, expanded or existing commercial solid waste disposal facility that accepts special waste for landfilling. When licensing any such facility, the department shall incorporate the provisions of this subsection into the license. The provisions of this subsection apply only to a commercial solid waste disposal facility that accepts special waste for landfilling.

[1999, c. 691, §1 (NEW) .]

11. Waste generated within the State. Consistent with the Legislature's findings in section 1302, a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. For purposes of this subsection, "waste generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.

[2007, c. 414, §3 (NEW) .]

SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 557, §1 (AMD). 1989, c. 157, (AMD). 1989, c. 585, §§E24-28 (AMD). 1989, c. 890, §§A40,B242 (AMD). 1991, c. 43, §§1,2 (AMD). 1991, c. 43, §§4,5 (AFF). 1991, c. 72, §7 (AMD). 1991, c. 169, (AMD). 1991, c. 241, (AMD). 1991, c. 622, §X14 (AMD). 1991, c. 644, §1 (AMD). 1991, c. 745, §3 (AMD). 1993, c. 191, §1 (AMD). 1993, c. 191, §4 (AFF). 1993, c. 378, §§5,6 (AMD). 1993, c. 383, §36 (AMD). 1993, c. 680, §A37 (RPR). 1993, c. 732, §§B1,2,C19 (AMD). 1995, c. 73, §§1,2 (AMD). 1995, c. 126, §1 (AMD). 1995, c. 160, §1 (AMD). 1995, c. 465, §§A13-16 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 642, §9 (AMD). 1997, c. 393, §§A47,48 (AMD). 1999, c. 393, §5 (AMD). 1999, c. 691, §1 (AMD). 2001, c. 212, §5 (AMD). 2007, c. 406, §2 (AMD). 2007, c. 414, §§2, 3 (AMD). 2007, c. 583, §§2-4 (AMD). 2009, c. 412, Pt. A, §1 (AMD).

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